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APPENDIX A—GUIDANCE ON THE APPLICATION OF §§23.434 AND 23.440 FOR SWAP DEALERS THAT MAKE RECOMMENDATIONS TO COUNTERPARTIES OR SPECIAL ENTITIES

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SOURCE: 77 FR 2628, Jan. 19, 2012, unless otherwise noted.

Subpart A [Reserved]

§§ 23.1–23.20 [Reserved]

Subpart B—Registration

§ 23.21 Registration of swap dealers and major swap participants.

(a) Each person who comes within the definition of the term “swap dealer” in section 1a(49) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

(b) Each person who comes within the definition of the term “major swap participant” in section 1a(33) of the Act, as such term may be further defined by the Commission, is subject to

the registration provisions under the Act and to part 3 of this chapter.

(c) Each affiliate of an insured depository institution described in section 716(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203 section 716(c), 124 Stat. 1376 (2010)) is required to be registered as a swap dealer if the affiliate is a swap dealer or as a major swap participant if the affiliate is a major swap participant.

§ 23.22 Associated persons of swap dealers and major swap participants.

(a) *Definition.* For the purpose of this section, the term “person” means an “associated person of a swap dealer or major swap participant” as defined in section 1a(4) of the Act and § 1.3(aa)(6).

(b) *Fitness.* No swap dealer or major swap participant may permit a person who is subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knows, or in the exercise of reasonable care should know, of the statutory disqualification; *Provided, however,* that the prohibition set forth in this paragraph (b) shall not apply to any person listed as a principal or registered as an associated person of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, or leverage transaction merchant, or any person registered as a floor broker or floor trader, notwithstanding that the person is subject to a disqualification from registration under section 8a(2) or 8a(3) of the Act.

§§ 23.23–23.40 [Reserved]

Subpart F—Reporting, Record-keeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

SOURCE: 77 FR 20202, Apr. 3, 2012, unless otherwise noted.

§ 23.200 Definitions.

For purposes of subpart F, the following terms shall be defined as provided.

(a) *Business trading unit* means any department, division, group, or personnel of a swap dealer or major swap participant or any of its affiliates, whether or not identified as such, that performs, or exercises supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, purchasing, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a registrant.

(b) *Clearing unit* means any department, division, group, or personnel of a registrant or any of its affiliates, whether or not identified as such, that performs any proprietary or customer clearing activities on behalf of a registrant.

(c) *Complaint* means any formal or informal complaint, grievance, criticism, or concern communicated to the swap dealer or major swap participant in any format relating to, arising from, or in connection with, any trading conduct or behavior or with the swap dealer or major swap participant's performance (or failure to perform) any of its regulatory obligations, and includes any and all observations, comments, remarks, interpretations, clarifications, notes, and examinations as to such conduct or behavior communicated or documented by the complainant, swap dealer, or major swap participant.

(d) *Executed* means the completion of the execution process.

(e) *Execution* means, with respect to a swap, an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law.

(f) *Governing body.* This term means:

- (1) A board of directors;
- (2) A body performing a function similar to a board of directors;
- (3) Any committee of a board or body; or
- (4) The chief executive officer of a registrant, or any such board, body, committee, or officer of a division of a